

State of California

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**Memorandum**

To : MARGIT ARAMBURU  
Executive Director  
Delta Protection Commission

Date : May 23, 1995

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From : RICHARD M. FRANK  
Supervising Deputy Attorney General  
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Subject: Proposed Commission Resolution re: San Luis Drain

You have indicated that the Commission will consider at its May 25, 1995 meeting a proposed resolution concerning the San Luis Drain. That draft resolution opposes releases of toxic wastewater from the San Luis Drain into the Sacramento-San Joaquin Delta, in favor of an "in-valley" disposal plan which addresses the drainage problem before it reaches the Delta. The resolution is based upon perceived adverse effects on Delta wildlife, agriculture, water quality and related concerns.

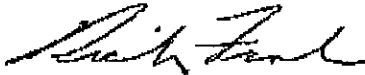
You have asked whether consideration and adoption of the proposed resolution (copy attached) is within the Commission's proper purview. Our conclusion is that it is.

I have reviewed the resolution in connection with both the Delta Protection Act and the Commission's implementing Resource Management Plan. The Act directs the Commission and its plan to preserve and protect Delta wildlife and fisheries; agricultural viability; the water quality of the Delta for both instream purposes and for human consumption; and a variety of related human and resource-related objectives. (Pub. Resources Code § 29760.) The Resource Management Plan adopted by the Commission in February 1995 sets forth detailed policies and objectives designed to accomplish those goals. The adoption of a non-binding resolution expressing the Commission's concerns about how the San Luis Drain could or could not frustrate those objectives appears consistent with the Commission's jurisdiction.

This conclusion is subject to two important caveats. First, the Commission is not empowered under the Act to assert any regulatory or planning jurisdiction over the U.S. Bureau of Reclamation or any other federal agency, and the record should make clear that this is not the Commission's intent. Second,

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this legal advice does not address the policy implications of this draft resolution; nor does it address the question of whether or how the Commission should coordinate its views regarding the San Luis Drain with other state agencies having jurisdiction over this subject, such as the Resources Agency and the State Water Resources Control Board.



RICHARD M. FRANK  
Supervising Deputy Attorney General